

**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Felker Truck & Equipment, Inc.

Case No: DOT-22-0002

FINAL DECISION

On January 18, 2022, Felker Truck & Equipment, Inc. (Felker) submitted a request for hearing seeking an exemption under Wis. Stat. § 218.0121(3m)(c). Administrative Law Judge Kristin P. Fredrick was assigned to the matter and a telephonic prehearing conference was held on January 31, 2022 and rescheduled to February 15, 2022 at which time the matter was set for hearing on March 31, 2022. The Department of Transportation (Department) advised that it did not intend to participate in the hearing and did not take a position with respect to the petition. The hearing was conducted telephonically. The record in this matter includes the digitally recorded hearing, the request for hearing, Memorandum dated March 7, 2022, and Affidavit of Richard Klein with attached pictures. The Division of Hearings and Appeals issued a Proposed Decision on April 15, 2022. No objections to the Proposed Decision were received. The Proposed Decision is hereby adopted as the Final Decision in this matter.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Felker Truck & Equipment, Inc., by

Attorney Tyler J. Claringbole
Herrling Clark Law Firm, Ltd.
800 N. Lynndale Drive
Appleton, WI 54914

Wisconsin Department of Transportation (Department)

No appearance

FINDINGS OF FACT

The Administrator finds:

1. Felker Truck & Equipment, Inc. (“Felker”) is a Wisconsin company located in Dale, Wisconsin. (Hearing testimony of Richard Klein; Affidavit of Richard Klein, ¶ 3)
2. Felker is in the business of building and selling propane and refined fuel delivery trucks in north central Wisconsin. (Klein hearing testimony; Klein Aff. ¶ 3)
3. In order to build the propane and refined fuel truck, Felker receives an incomplete vehicle chassis from a third-party motor vehicle dealer and then adds a fuel tank and other related equipment to the chassis in accordance with customer specifications. (Klein hearing testimony; Klein Aff. ¶¶ 4-5)
4. It takes approximately six months to complete a final sales agreement from initial customer contact to execution of the contract and then an additional six weeks to complete the build process for a typical Felker truck. (Klein hearing testimony; Klein Aff. ¶¶ 9 and 11)
5. Felker builds approximately 30 trucks per year with a price range between \$150,000 to \$200,000 each based upon customer specific demands and maintains no inventory of trucks available to purchase to walk-in customers. (Klein hearing testimony; Klein Aff. ¶¶ 8 and 12)
6. At present and due to the limitations imposed under Wisconsin’s “Factory Store” rule, the end user of a completed Felker truck must purchase the chassis directly from a motor vehicle dealer and then separately purchase the fuel tank and remaining equipment built onto the chassis from Felker. (Klein hearing testimony; Klein Aff. ¶ 7)
7. There are currently no independent dealerships in the United States or Wisconsin that sell completed Felker trucks. (Klein hearing testimony)
8. Given the limited annual sales, the supply chain shortage, the lengthy process to sell and build Felker trucks, and the cost prohibitive nature and substantial investment necessary to create a dealership and maintain an inventory of trucks, there is no evidence that there are any prospective independent dealers in Wisconsin available to own and operate a dealership that builds and sells Felker trucks in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of Felker. (Klein hearing testimony)

DISCUSSION

Under Wis. Stat. § 218.0121(2m), a manufacturer, distributor or importer of motor vehicles, or its respective agents, are not allowed to own or operate a motor vehicle dealership in the State of Wisconsin. This is commonly referred to as “the Factory Store rule”. There are four exceptions to the Factory Store rule:

(3m) This section does not prohibit any of the following:

- (a) A factory from holding an ownership interest in or operating a dealership for a temporary period, not to exceed one year, during the transition from one owner or dealer operator to another.
- (b) A factory from holding an ownership interest in a dealership, if all of the following apply:
 - 1. The dealer operator of the dealership is an individual who is not an agent of the factory.
 - 2. The dealer operator of the dealership is unable to acquire full ownership of the dealership with his or her own assets.
 - 3. The dealer operator of the dealership holds not less than 15 percent of the total ownership interests in the dealership within one year from the date that the factory initially acquires any ownership interest in the dealership.
 - 4. There is a bona fide written agreement in effect between the factory and the dealer operator of the dealership under which the dealer operator will acquire all of the ownership interest in the dealership held by the factory on reasonable terms specified in the agreement.
 - 5. The written agreement described in subd. 4. provides that the dealer operator will make reasonable progress toward acquiring all of the ownership interest in the dealership, and the dealer is making reasonable progress toward acquiring all of the ownership interest in the dealership.
 - 6. Not more than eight years have elapsed since the factory initially acquired its ownership interest in the dealership, unless the department, upon petition by the dealer operator, determines that there is good cause to allow the dealer operator a longer period to complete his or her acquisition of all of the ownership interest in the dealership held by the factory and the longer period determined by the department has not yet elapsed.
- (c) The ownership, operation or control of a dealership by a factory that does not meet the conditions under par. (a) or (b), if the division of hearings and appeals determines, after a hearing on the matter at the request of any party,

that there is no prospective independent dealer available to own and operate the dealership in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of the factory.

- (d) The holding or acquisition, solely for investment purposes, of an ownership interest in a publicly traded corporation by an employee benefit plan that is sponsored by a factory.

Wis. Stat. § 218.0121(3m).

The petitioner in the present matter, Felker Truck & Equipment, Inc. (Felker), builds propane and refined fuel trucks. (Klein hearing testimony; Klein Aff. ¶ 3) Felker builds the trucks by mounting the fuel tank and other related equipment to a truck chassis purchased separately by the end user from a third-party motor vehicle dealer. (Klein hearing testimony; Klein Aff. ¶¶ 4-5). Felker builds approximately 30 trucks per year at a cost of between \$150,000 to \$200,000. (Klein hearing testimony; Klein Aff. ¶¶ 8 and 12) The sales process alone from initial customer contact to execution of a sales agreement takes six months followed by an additional six weeks to complete the build process. (Klein hearing testimony; Klein Aff. ¶¶ 9 and 11) Due to the Department's "Factory Store rule", Felker has been prevented from selling the completed trucks (both the chassis and installed equipment) or transferring title of the completed truck directly to its end-user customers.

At the hearing Felker presented testimony and evidence establishing that there is no prospective independent dealer available to own and operate a dealership in Wisconsin to sell Felker trucks in a manner consistent with the public interest and that meets the reasonable standards and uniformly applied qualifications of Felker. Moreover, based upon the testimony, it would be cost prohibitive to operate an independent dealership due to the low volume of sales, lengthy sales and installation process, supply chain shortage issues, and the substantial financial investments necessary to maintain an inventory of Felker propane and fuel trucks. As recognized by Felker's counsel in his supporting memorandum, Felker's exemption request is consistent with the Division's prior granted requests for exemptions under Wis. Stat. § 218.0121(3m)(c). See *In re the Matter of CIFA North American, Inc.*, Case No. DOT-21-0007 (May 19, 2021); *In re the Matter of Beton America, LLC*, Case No. DOT-21-0009 (May 19, 2021); and *In re the Matter of Braun Northwest, Inc.*, Case No. DOT-18-2007 (February 22, 2019).

The Department chose not to participate in this hearing and per a March 1, 2022 email from the Department's Office of General Counsel, the Department advised that it takes no position with regard to the petition for exemption in this matter. Therefore, based upon the evidence, Felker has satisfied its burden to establish it is entitled to an exemption of the Factory Store rule under Wis. Stat. § 218.0121(3m)(c).

CONCLUSIONS OF LAW

The Administrator concludes:

1. Felker Truck & Equipment, Inc. has satisfied the burden of showing that no prospective independent dealers are available in Wisconsin to own and operate a dealership for the sale and service of the specialty trucks built by Felker in a manner consistent with the public interest and that meets the reasonable standards and uniformly applied qualifications of Felker.
2. The Division of Hearings and Appeals has authority pursuant to Wis. Stat. § 218.0121(3m)(c) to issue the following order.

ORDER

The Administrator orders:

Based on the evidence in the record, no prospective independent dealers are available to own and operate a dealership for the sale and service of Felker built trucks in Wisconsin. Felker Truck & Equipment, Inc. should be allowed to own and operate a dealership in Wisconsin selling and servicing its products and vehicles and is hereby granted an exemption from the factory store rule pursuant to Wis. Stat. § 218.0121(3m)(c).

Dated at Madison, Wisconsin on May 4, 2022.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: _____
Brian K. Hayes, Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.